IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1225 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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K P HIRANI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 1225 of 1989

MR YS MANKAD for Petitioner No. 1

M/S MG DOSHIT & CO for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/07/2002

ORAL JUDGEMENT

In this petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or

order to quash and cancel order dated January 10, 1989, passed by the Collector under section 258 of the Gujarat Municipalities Act, 1963, by which resolution dated March 24, 1987 giving land belonging to the Municipality on lease to the petitioner, is stayed and the petitioner is called upon to remain present before the Collector for representing his case.

2. Heard Mr. Y.S.Mankad, learned counsel for the petitioner and Mr. Manish K.Dagli, learned A.G.P. appearing for the respondents. In H.H.Parmar v. Collector, Rajkot, 1979(2) GLR 97, the Division Bench of this Court had taken the view that under section 258 of the Gujarat Municipalities Act, 1963 ("the Act" for short) the Collector had no power to issue resolution passed by the Municipality when it was implemented or executed. On the basis of the said decision, the petition was entertained and interim relief was granted. However, the Full Bench of this High Court in Parshottambhai G.Chavda v. State of Gujarat & Ors, 1998(2) GLR 1048 has overruled the view taken by the Division Bench in H.H.Parmar (supra), and held that the Collector has powers to suspend resolution even when it is implemented or executed. The plea, therefore, that the Collector has no jurisdiction to invoke powers under section 258 of the Act, is devoid of merits and cannot be accepted. As stated by the petitioner herself in the petition, the Collector is to hear the petitioner before passing final order and, therefore, it is not necessary for this Court to go into the merits of the claim advanced by the petitioner. The Collector shall issue fresh notice to the petitioner giving intimation about the date of hearing before him and shall decide the matter in accordance with law.

Subject to the foregoing direction, the petition fails and is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)